

INITIAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend sections 3000, 3043.6 and 3375 and to adopt new sections 3077, 3077.1, 3077.2, 3077.3 and 3077.4 of the California Code of Regulations (CCR), Title 15, concerning the transfer of inmate assessment responsibilities to the county court and probation departments.

The CDCR is mandated to provide assessments of every offender upon his or her reception into the Department. Based on these assessments, the CDCR classifies prisoners, and when reasonable, assigns them to the institution of the appropriate security level and gender population nearest their home. Offender assessments include, but are not limited to, reading and math testing, as well as medical, dental, and mental health screenings.

In 2005, the California Legislature enacted and the Governor signed into law, Senate Bill (SB) 618 (2005-2006 session), which under existing law, finds and declares that programs should be available for inmates, including educational programs that are designed to prepare nonviolent felony offenders for successful reintegration into the community. SB 618 authorizes a county to develop a multi-agency plan to prepare and enhance nonviolent felony offenders' successful reentry into the community by a required plan developed by, and having the concurrence of, the presiding judge, the chief probation officer, the district attorney, the local custodial agency, and the public defender, or their designees, for submission to the board of supervisors for its approval.

SB 618, which added section 1203.8 to the Penal Code, allows the CDCR to enter into an agreement with up to three counties in the State of California. This agreement transfers the responsibility of the risk and needs assessment for eligible non-violent offenders to the county probation department and courts from which the inmate received a conviction and sentence to state prison. SB 618 supports successful reintegration of parolees into society by developing an early assessment of the offender's risks and needs prior to sentencing and transfer into the state prison system. This transfer of the assessment function from the CDCR to the community in which an offender committed his or her crime and to which the parolee will be required by statute to return to on supervised parole, will better enable each offender to become a contributing member of society which in turn will improve public safety in the community.

On February 5, 2007, under an agreement with the County of San Diego, and pursuant to the authority of Penal Code section 5058.1, the CDCR began implementing the provisions of SB 618 by adopting section 3999.3, the Transfer of Assessment Responsibilities Pilot Program, to the CCR, Title 15. This Pilot Program, which transferred the assessment authority for eligible non-violent offenders to the County of San Diego, outlined the operational plans of the County of San Diego working in conjunction with the CDCR's Richard J. Donovan Reception Center and Correctional Facility (RJD) and the California Institution for Women (CIW). The effective dates of this pilot program were not to exceed 24 months and will end on February 5, 2009. In order to continue the program without interruption, it is necessary that the CDCR promulgate and adopt permanent regulations before the Pilot Program effective ending date of February 5, 2009 is realized.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons, than the action proposed.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

In proposing amendments to these regulations, the department has not identified or relied upon any technical, theoretical, or empirical study, report, or similar document.

3000. Definitions

Section 3000 is amended to alphabetically merge into the text, both the definitions of Senate Bill (SB) 618 Participants and SB 618 Program which are used extensively throughout these regulations. This is necessary for clarification.

3043.6. Impact of Transfer on Credit Earning

Subsections 3043.6(a) through (a)(2) are unchanged.

Subsection 3043.6(a)(3) is amended to ensure that SB 618 Participants as defined in section 3000, are immediately enrolled in the same or similar program and/or are placed at the top of the receiving institution's programming waiting list in the event that the institution's vocational/training program is full. Pursuant to Penal Code (PC) section 1170(a)(2), which provides in part, encouragement in the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders, and to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program. This revised text ensures that SB 618 Participants are provided the continuous programming they are assessed to need.

Existing Subsection 3043.6(a)(3)(A) is renumbered 3043.6(a)(3)(B) and is amended.

New Subsection 3043.6(a)(3)(A) is adopted for clarity and consistency and by providing that SB 618 inmates with the earliest release date be given first priority on the institutions waiting list for programming.

Existing Subsections 3043.6(a)(3)(B),(C), and (D) are renumbered 3043.6(a)(3)(C), (D), and (E) respectively and are amended for the purpose of changing the order by which the listed inmates in each subsection is placed on the institution's waiting list.

Subchapter 3043.6(b) through 3043.6(f) are unchanged.

Chapter 1.

New Article 6.7 is adopted.

Article 6.7. Transfer of Inmate Assessment Responsibility

New Section 3077 is adopted.

3077. County Assessment Program

New section 3077 is adopted to reinforce that pursuant to the provisions of sections 3375 through 3379, upon reception, an assessment and classification process is provided to each person committed to the custody of the CDCR. Text establishes that exception to this, specifically related to the words “upon reception” are SB 618 Participants who “prior to reception,” shall be assessed by the county in which the offender is adjudged to have committed his or her crime.

New subsections 3077(a) through (a)(2) establish that CDCR has the authority pursuant to PC section 1203.8 to enter into an agreement with up to three counties to allow the transfer of CDCR’s duty and obligation to assess the risks and needs of nonviolent felony offenders and to develop a multi-agency plan (MAP) as defined and outlined in following subsections (a)(1)(A) through (a)(1)(E).

New subsections 3077(b) through (b)(6) provides for clarification, the criteria for inmate eligibility for the SB 618 Program.

New subsections 3077(c) through (c)(7) provides for clarification, the criteria that will exclude an inmate from participating in the SB 618 Program.

New subsections 3077(d) through (d)(3) provides for clarification, discretionary factors that may be taken into consideration when determining SB 618 Program eligibility. This allows on a case-by-case basis, the greatest possible leeway in determining and maximizing SB 618 Participant eligibility and participation in the SB 618 Program.

New section 3077.1 is adopted.

3077.1. Senate Bill 618 Program Participant Determination, Assessment, and Processing

New subsection 3077.1(a) establishes the process for SB 618 Program screening, eligibility determination, and voluntary participation agreement. New text also provides that upon offender agreement to participate in the SB 618 Program, the court will refer the case to county probation for pre-sentence investigation, multidisciplinary assessment, and the development of a Life Plan as it is described in subsection 3077.1(b).

New subsections 3077.1(a)(1) through (a)(2)(C) establishes and clarifies who shall and may be included in the county Multi-Disciplinary Team (MDT) and the functions each of the positions perform in the assessment of the SB 618 Participant.

New subsection 3077.1(b) through (b)(2) defines the SB 618 Participant’s Life Plan and its purpose. This is necessary as the Life Plan is the primary source that will outline, plan and guide the SB 618 Participant from sentence and incarceration through release on parole.

New subsections 3077.1(c) through (c)(2), for clarification and directive, provides that within 23 days of the court referral for the SB 618 Participant, the Life Plan as described in subsection 3077.1(b) shall be developed, and the county probation officer will 5 days prior to the court hearing include the Life Plan with the pre-sentence report and return it to the court.

New subsection 3077.1(d) provides for clarification and to provide sufficient time for the court, that within 28 working days post conviction, the court will affirm the Life Plan and sentence the SB 618 Participant to state prison.

New subsection 3077.1(e) specifies for clarification and directive, that within 14 working days after sentencing, the SB 618 Participant will be transported to the appropriate CDCR institution for placement. The 14 working days has been determined sufficient time in to complete the transfer process.

New subsection 3077.1(f) and (g) establishes for clarification that the processing of the SB 618 Participant at the institution's reception center (RC) is different from other inmates who must go through the regular reception and classification process per Title 15, §3375-3379. Upon reception at the institution, the period of time which may elapse prior to endorsement is dependent upon several factors related to institutional population management including but not limited to, security issues, lockdown, and available resources and personnel, etc. Once endorsement has been effected, the process as described in proposed new section 3077.3(a) below provides the CCI review of the Life Plan within 14 days.

New section 3077.2 is adopted.

3077.2. Senate Bill 618 Participant Medical, Dental, and Mental Health Assessment

New subsections 3077.2(a) through (a)(4)(C) provide the authority and directive that each county participating in the SB 618 Program may perform medical, dental, and mental health assessments pursuant to CDCR and Division of Correctional Health Care Services (DCHCS) court ordered requirements, regulations, policies and procedures including all applicable tests and assessments as necessary, including tuberculosis tests and other tests to determine the presence of communicable diseases and/or other medical conditions which require further evaluation and a recommendation for follow-up care upon receipt at the reception center where CDCR medical staff will complete the history and physical exam as necessary. New language also establishes and clarifies who may perform each of the medically described assessments at the county facility. Additionally for clarification, CDCR medical, dental, and mental health staff may perform any of the functions, if needed, at the county facility based on specific needs or requirements of the medical receiver and/or court compliance requirements and permissions. To ensure quality control, subsection (a)(3) provides that the CDCR Dental Quality Management Assessment Team staff or designee shall schedule and provide any necessary training for county dental or county contract dental staff at the appropriate county correctional facility.

Section 3077.2 authority and reference citation includes references to the requirements and authority of *Coleman v. Schwarzenegger* for inmate mental health; *Plata v. Schwarzenegger* concerning inmate medical care; and *Perez v. Tilton* concerning inmate dental care.

New section 3077.3 Senate Bill 618 Participant Institutional Programming is adopted.

New subsection 3077.3(a) establishes that the SB 618 Participant will be seen within a mandatory time frame after being endorsed by the receiving institution by an Initial Classification Committee. This is necessary to ensure that the SB 618 Participant is assigned to the appropriate program(s) according to his or her Life Plan.

New subsection 3077.3(b) ensures that the SB 618 Participant will be assigned by the Inmate Assignment Office to programs that are consistent with and support successful completion of the Life Plan.

New subsection 3077.3(b)(1) establishes and ensures that the SB 618 Participant shall be placed at the top of the institution's waiting list if there are no vacancies available in appropriate work/training assignments. Pursuant in part to PC section 1170(a)(2), the Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. The CDCR is encouraged to give priority enrollment in programs to promote successful return to the community to an

inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program. This subsection helps to ensure this takes place.

New subsection 3077.3(b)(2) clarifies that a Classification Committee action is needed to place or remove a SB 618 Participant from a waiting list. This is consistent with other regulations concerning the placement and removal of inmates from waiting lists.

New subsection 3077.3(c) is adopted to ensure that an inmate's Classification Committee Review is conducted at least once annually.

New subsections 3077.3(d) through (d)(3) are necessary to establish the duties of the Prison Case Manager as part of the SB 618 Advisory Committee and to ensure that the eligible SB 618 Participant's Life Plan as expressed in its needs and goals are met.

New subsection 3077.3(e) specifies to ensure that six months prior to an inmate's release, the prison case manager, the SB 618 Participant, the parole representative, and the correctional case manager meet and revise the Participant's Life Plan with an emphasis on the community reentry plan for housing, transportation, and immediate enrollment in community support programs which include, but are not limited to, substance abuse and mental health services, work readiness training and placement.

New subsection 3077.3(f) provides the process in the event a SB 618 Participant no longer wishes to participate in the SB 618 Program or is no longer eligible for retention at the SB 618 programming institutions. Text provides that the Participant will be seen by an SB 618 Advisory Group whether the inmate is a participating inmate in an institution or on supervised parole.

New Subsections 3077.3(f)(1) through (f)(2)(C) for clarification, identifies the proposed membership of the institution Advisory Group while the inmate is in custody in the institution or the Advisory Group in the parole community while the SB 618 Participant is on supervised parole.

New subsection 3077.3(f)(3) identifies for clarification and directive, the forms and files to which documentation must be placed to record findings of the Advisory Group.

New subsection 3077.3(f)(4) provides that an SB 618 Participant who is no longer determined to be eligible for the SB 618 Program, may appeal the Advisory Group decision by utilizing the inmate appeal process. This action provides clarity and consistency within the Title 15, Division 3 regulations.

New Section 3077.4 is adopted.

3077.4. SB 618 Participant Community Services

New subsections 3077.4(a) through (b)(9) are necessary to specify that community services providing a state and local response, that will support and sustain the SB 618 Participant with his or her rehabilitative efforts, and which may be subject to available state and local funding, may be made available to the SB 618 Participant. Subsections 3077.4(b) through (b)(9) provide examples of the possible available services.

Subchapter 4, Article 10

3375. Classification Process.

Subsection 3375(a) is necessary to amend section 3375 to make editorial changes that conform with the existing organizational structure of CDCR and to establish that the county will provide the SB 618

Participants with a preliminary classification at a county facility prior to reception at an departmental institution. This change is necessary for clarity and to remove any conflict with existing regulations.

Subsections 3375(b) through 3375(k)(2) are unchanged.